

FIRST PRINT

**INDUSTRIAL ARBITRATION (ENTERPRISE BARGAINING)
AMENDMENT BILL 1989**

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The object of this Bill is to amend the Industrial Arbitration Act 1940 so as:

- (a) to enable the registration and enforcement of enterprise agreements made between an employer carrying on a business or undertaking (an "enterprise") and a registered association of persons employed in the enterprise (an "industrial association") or an industrial union, which agreements will fix conditions of employment for those employees; and
- (b) to dispense with the present system that allows those conditions to be fixed by industrial agreements registered under that Act, while saving any such agreements presently in force; and
- (c) to provide for minimum conditions of employment for employees bound by enterprise agreements; and
- (d) to promote rationalisation of employee representation in industrial matters; and
- (e) to make other provisions of a minor or consequential nature.

The proposed Act will also amend certain other Acts consequentially.

The intention is to establish a new approach to industrial relations pursuant to which appropriate conditions of employment will be negotiated for each particular enterprise between the employer and persons employed in the enterprise, rather than on an industry-wide basis.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the proposed Act to commence on a proclaimed day or proclaimed days.

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Clause 3 provides for the Industrial Arbitration Act 1940 to be referred to in the proposed Act as the Principal Act.

Clause 4 is a formal provision that gives effect to the Schedules of amendments to the Principal Act.

Clause 5 is a formal provision that gives effect to the Schedule of amendments to other Acts.

SCHEDULE 1 - AMENDMENTS TO THE PRINCIPAL ACT PROVIDING FOR ENTERPRISE BARGAINING

The amendment made by this Schedule inserts a new Part 1C into the Principal Act. The proposed provisions of that Part may be summarised as follows:

PART 1C - ENTERPRISE BARGAINING

Division 1 - Definitions

Section 13A (definitions) defines the terms "enterprise", "enterprise agreement", "enterprise employer" and "registered" for the purposes of the proposed Part. It is made clear that businesses conducted by holding companies and subsidiary companies may be treated, for the purposes of the proposed Part, as a single enterprise or separate enterprises.

Division 2 - Enterprise agreements

Section 13B (nature of an enterprise agreement) explains that an enterprise agreement is an agreement made to fix conditions of employment of persons employed in a single enterprise in crafts, occupations or callings.

Section 13C (effect of a registered enterprise agreement) declares that a registered enterprise agreement will be enforceable as if it were an award. Provisions of such an agreement will prevail over any award made under the Principal Act or any industrial agreement or order of the Industrial Commission. Intervention by the commission or by a conciliation commissioner or committee in relation to a condition of employment fixed by such an agreement may occur only with the consent of the parties to the agreement.

Section 13D (parties to an enterprise agreement) provides that the parties to an enterprise agreement are to be the employer carrying on the enterprise and a single enterprise association registered for the enterprise concerned or one or more industrial unions representing employees engaged in the enterprise.

Section 13E (content of an enterprise agreement) specifies that an enterprise agreement must:

- * identify the parties to the agreement; and
- * fix conditions of employment; and
- * identify any award that fixes other conditions of employment for employees bound by the agreement; and
- * set out procedures to be followed to avoid grievances, and to settle any grievances, between the parties to the agreement; and

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- * declare that the agreement was not entered into under duress.

Such an agreement must (for each person to be bound by it) fix, or identify an award that fixes, conditions of each kind for which minimum conditions are fixed for the time being by or under the proposed Part and will apply only to conditions of employment at places at which the enterprise was or was intended to be, or could have reasonably been expected to be, carried on when the agreement was made, unless the agreement provides otherwise.

Section 13F (formal considerations) requires an enterprise agreement to be in writing and signed.

Section 13G (term of enterprise agreement) provides that an enterprise agreement, unless it is an amending agreement, is to have a term of not less than 12 months nor more than 3 years. It can be terminated at any time if both parties agree. Should no such agreement be reached, it can be terminated at the end of its specified term or at any time afterwards, but only if one of the parties gives at least 3 months' notice to the other.

Section 13H (variation of enterprise agreement) permits the variation of an enterprise agreement at any time by mutual consent of the parties to it.

Section 13I (registration of enterprise agreement required) requires the Industrial Registrar to register each enterprise agreement lodged for registration unless it does not comply with proposed Division 2 or the registrar is satisfied that it was entered into under duress. Registration must also be refused if the agreement fixes a condition of employment less favourable to an employee than a corresponding minimum condition applicable for the time being. Such an agreement is binding only if registered.

Section 13J (persons bound by enterprise agreement) provides that an enterprise agreement binds not only the parties to it, but all persons employed in the enterprise who are employed in a craft, occupation or calling to which the agreement relates. Successors to the enterprise employer (such as purchasers of the enterprise) are also bound.

Section 13K (minimum conditions of employment) fixes conditions of employment which are the least favourable that can be fixed by an enterprise agreement.

They deal with the following matters:

- * guaranteed weekly wages for adult and junior full-time employees;
- * a maximum of ordinary hours of employment for each week;
- * a guaranteed hourly rate of pay for part-time and casual employees;
- * a minimum rate for sick leave;
- * a minimum rate for redundancy payments.

Section 13L (review and variation of minimum conditions) requires the Minister to review the minimum conditions of employment each year, in the case of the guaranteed weekly wage for adults, and each 2 years, in the case of the other minimum conditions. A specified procedure must be followed for reviewing the guaranteed weekly wage and certain other matters. Regulations made on the

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recommendation of the Minister may vary the minimum conditions fixed for the time being.

Section 13M (access to agreements through registrar) limits the number of persons who may inspect, or obtain a copy of, a registered enterprise agreement held by the registrar.

Section 13N (notice to be given of working conditions) requires an enterprise employer to inform employees and prospective employees of the enterprise about the provisions of any registered enterprise agreement fixing conditions of employment that are or would be applicable to them.

Section 13O (restriction on duplication of special conditions) provides that known conditions of enterprise agreements are not to be unnecessarily duplicated in awards, orders or directions of the commission, or of conciliation commissioners or conciliation committees.

Division 3 - Enterprise bargaining units

Section 13P (purpose of associations of employees) declares that persons employed in a single enterprise in one or more crafts, occupations or callings may form and register an association of employees to facilitate the making, registration, variation and enforcement of an enterprise agreement.

Section 13Q (nature of associations of employees) provides that an association of employees may be registered so that it will relate to one or more crafts, occupations or callings, but its membership must be limited to persons employed in a single enterprise. It will not be possible to register such an association if a member of the association is already a member of a registered association for the same enterprise.

Section 13R (application for registration of association of employees) allows an application to be made for the registration of an association of employees if at least 65% of the employees who would be bound by a registered enterprise agreement entered into by the association vote in a secret ballot in favour of forming the association.

Section 13S (registration of association of employees) requires the registrar to register an association of employees if the application has been made in accordance with the proposed Part, unless the registrar is satisfied that there was an irregularity concerning the ballot. If at least 20% of the employees who would be bound by a registered enterprise agreement entered into by the association proposed to be registered complain to the registrar about an alleged irregularity in the conduct of the ballot, the registrar may arrange for a further secret ballot.

Section 13T (registered name of association) provides that the name of a registered association of employees (an "industrial association") must identify the enterprise to which it relates.

Section 13U (effect of registration) constitutes an industrial association as a body corporate and applies (subject to express provisions made by or under the Principal Act and to any modifications or exceptions prescribed by the regulations) the provisions of the Principal Act and of other Acts and of statutory instruments to such

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an association and its members and officers as if the association were an industrial union.

Section 13V (cancellation of registration of association) states the grounds for cancellation by the registrar of the registration of an industrial association. Registration may be cancelled if there is, for 6 months or more, no registered enterprise agreement to which the association is a party.

Section 13W (rationalising union coverage: voting for change) empowers an industrial union representing at least 50% of the employees of an enterprise (or a number of employees fixed in relation to the size of the workforce of the enterprise by the proposed section) to arrange for a vote to be taken by secret ballot to decide whether the employees whose conditions of employment can be the subject of State awards should be represented by one registered union only.

Section 13X (rationalising union coverage: effect of vote in favour) provides that, if at least 65% of those voting favour representation by a single union, the registrar is required to give effect to the vote, unless the registrar is satisfied that there was an irregularity concerning the ballot. For that purpose, the registrar is empowered to alter an industrial union's rules, but only after giving the union an opportunity to make representations.

Section 13Y (complaints about irregularities before ballot) declares that an industrial union whose membership may be affected by a ballot conducted under proposed section 13W may complain to the registrar about an alleged irregularity in the pre-ballot procedures followed.

Section 13Z (complaints about irregularities during ballot) declares that, if at least 20% of the employees eligible to vote in a ballot conducted under proposed section 13W complain to the registrar about an alleged irregularity in the conduct of the ballot, the registrar may arrange for a further secret ballot.

Section 13AA (registrar may require further information) empowers the registrar to require further information concerning any alleged irregularity about which a complaint has been made, or about a ballot that the registrar has arranged, under proposed Division 3.

Section 13AB (frequency of ballots) restricts the number of ballots that will have effect for the purposes of the proposed new Part so as to avoid too frequent resort to ballots.

SCHEDULE 2 - OTHER AMENDMENTS TO THE PRINCIPAL ACT

Amendments related to the introduction of enterprise bargaining

*** Definitions**

Definitions of "enterprise agreement" and "industrial association" are to be inserted. The term "industrial association" is defined to mean an industrial association registered under proposed Part 1C of the Principal Act. Other consequential amendments are made to present definitions (Schedule 2 (1)).

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** Industrial agreements*

After the commencement of proposed Part 1C, no new industrial agreements will be able to be made or registered under the Principal Act. Industrial agreements that are in force immediately before that commencement are saved but may not be varied after that commencement (Schedule 2 (4) (proposed section 11) and (5)).

** Orders concerning demarcation*

The commission is to be empowered to make orders concerning the rights of industrial unions to represent employees for the purpose of rationalising industrial union coverage for employees of enterprise employers and allowing representation of employees at greenfields sites by a single union. Such an order may also be made for such other purposes as the commission considers appropriate.

When it makes such an order, the commission is required to specify such alterations as may be necessary to be made to the affected unions' rules to give effect to the order, but only after giving the unions an opportunity to make representations (Schedule 2 (6) - proposed section 35A).

** Enforcement of registered enterprise agreements*

Although most of the provisions of the Principal Act that relate to industrial agreements will not apply to enterprise agreements, the scope of the following provisions of that Act applicable to industrial agreements is to be extended for the purpose of allowing the enforcement of enterprise agreements:

- . section 92 (recovery of wages etc.)
 - . section 93 (penalty for breach of award etc.)
 - . section 95A (particulars of wages to be furnished to employees)
 - . section 96 (time-sheets and pay-sheets to be kept)
 - . section 96A (power to amend)
 - . section 99 (illegal strikes)
 - . section 129A (right of entry)
- (Schedule 2 (26), (29), (32), (33), (34), (35) and (39))

Statute law revision

Part 1 (preliminary) of the Principal Act, as presently enacted, is to be divided so as to contain 2 new Parts, namely Part 1A (ss. 6-10A relating to industrial unions) and Part 1B (ss. 11 and 13 relating to industrial agreements) (Schedule 2 (2) and (3)).

Other consequential amendments

The other amendments made by Schedule 2 are consequential on the insertion of proposed Part 1C into the Principal Act by Schedule 1.

SCHEDULE 3 - AMENDMENTS TO OTHER ACTS

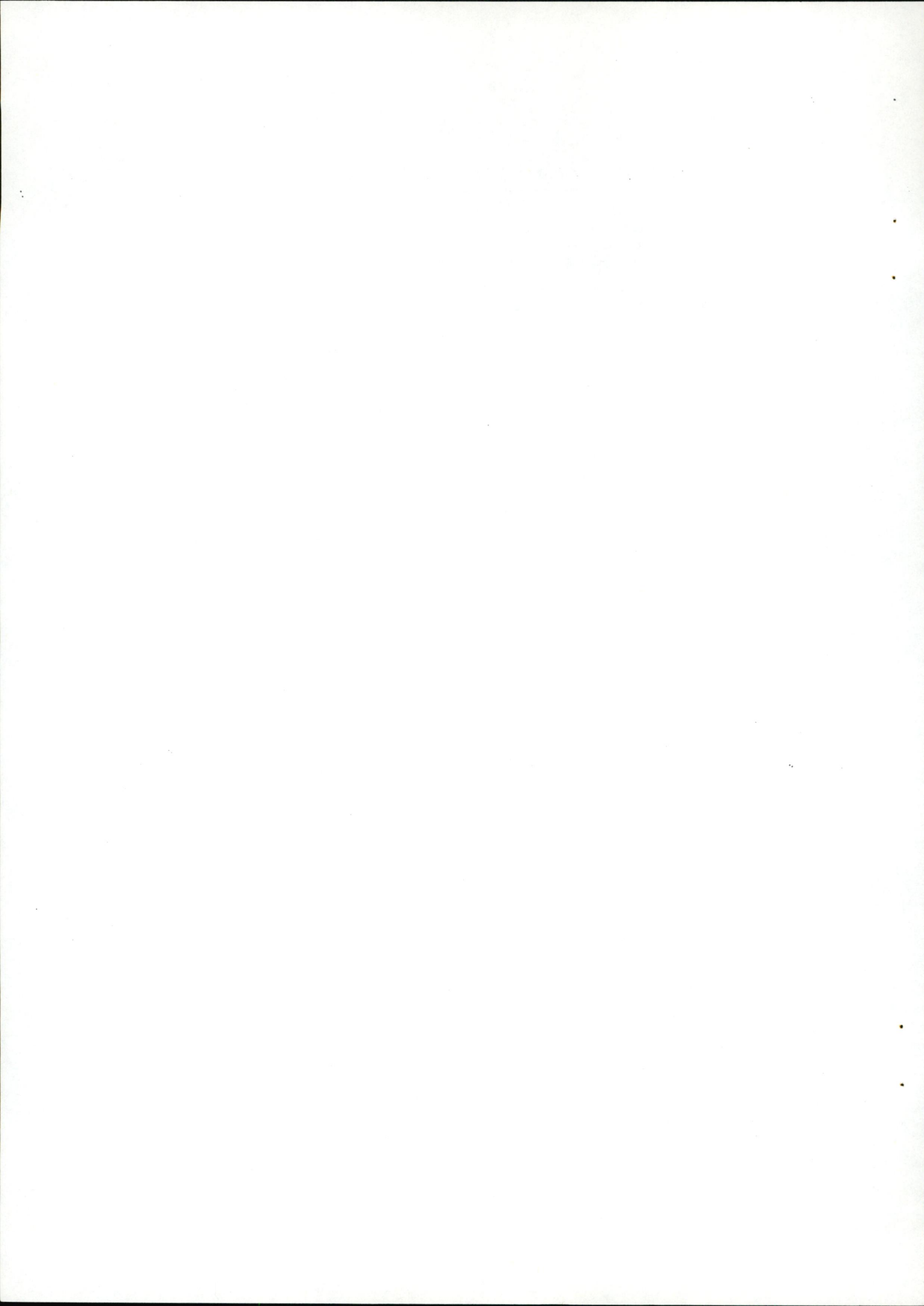
The following Acts are amended so as to make it clear that they apply to employees bound by enterprise agreements:

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- . Annual Holidays Act 1944;
- . Long Service Leave Act 1955;
- . Long Service Leave (Metalliferous Mining Industry) Act 1963.

The Employment Protection Act 1982 is amended so as to make it clear that it does not apply to those employees.

The Essential Services Act 1988 is amended to make it clear that it applies to an essential service provided by an enterprise the subject of an enterprise agreement.



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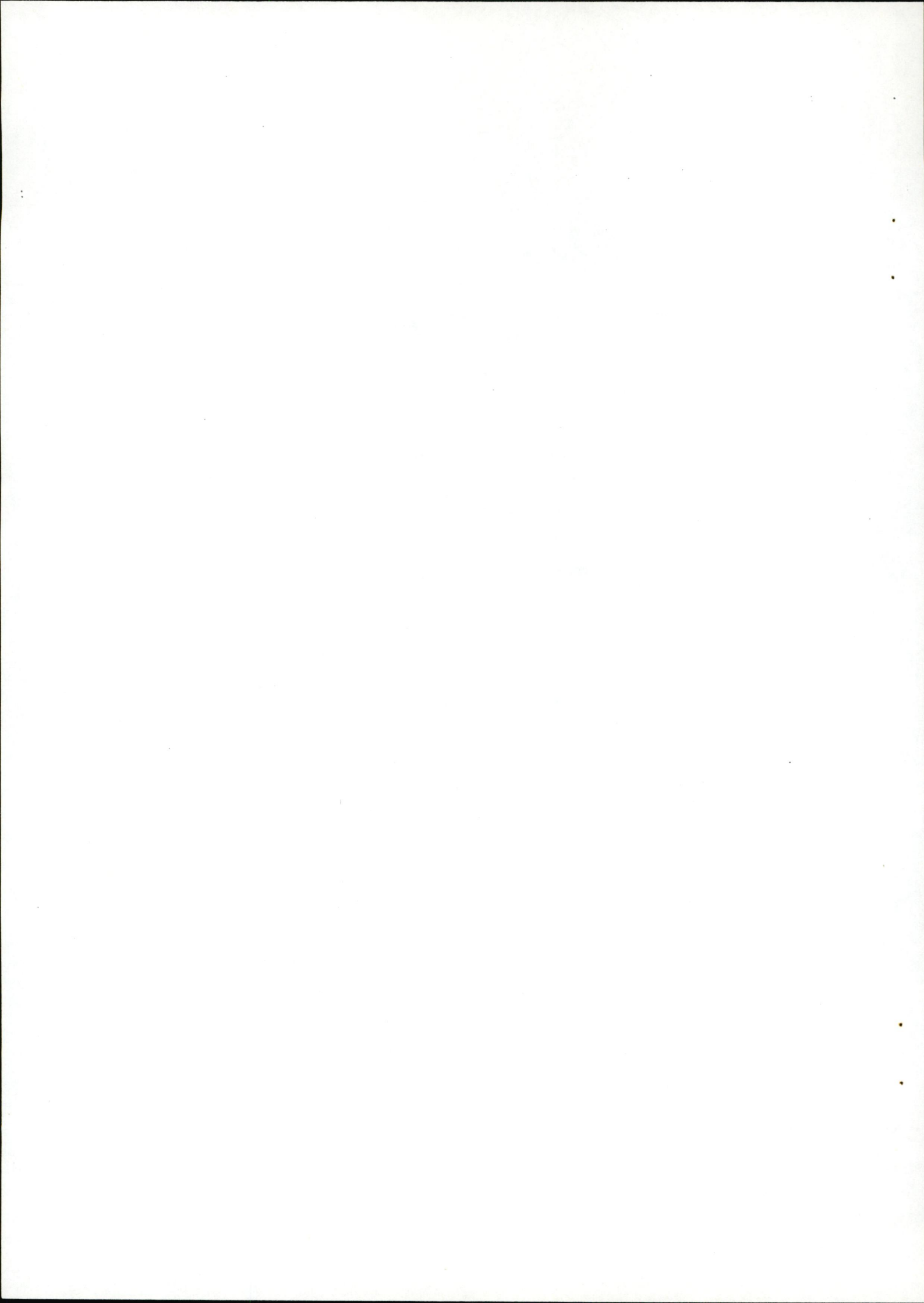
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SCHEDULE 3 - AMENDMENTS TO OTHER ACTS



**INDUSTRIAL ARBITRATION (ENTERPRISE BARGAINING)
AMENDMENT BILL 1989**

NEW SOUTH WALES



No. , 1989

A BILL FOR

An Act to amend the Industrial Arbitration Act 1940 so as to provide for the fixing of conditions of employment by enterprise bargaining; to amend certain other Acts consequentially, and for other purposes.

Industrial Arbitration (Enterprise Bargaining) Amendment 1989

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Industrial Arbitration (Enterprise Bargaining) Amendment Act 1989.

Commencement

2. This Act commences on a day or days to be appointed by proclamation.

Principal Act

3. The Industrial Arbitration Act 1940 is referred to in this Act as the Principal Act.

Amendment of Industrial Arbitration Act 1940 No. 2

4. The Principal Act is amended as set out in Schedules 1 and 2.

Amendment of other Acts

5. Each Act specified in Schedule 3 is amended as set out in that Schedule.

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(Sec. 4)

Part 1C (sections 13A-13AB):

After section 13, insert:

PART 1C - ENTERPRISE BARGAINING

Division 1 - Definitions

Definitions

13A. (1) In this Part:

"enterprise" means a business or undertaking carried on by an employer;

**SCHEDULE 1 - AMENDMENTS TO THE PRINCIPAL ACT
PROVIDING FOR ENTERPRISE BARGAINING - *continued***

"enterprise agreement" means an enterprise agreement made under this Part;

"enterprise employer" means the employer carrying on an enterprise;

"registered" means registered under this Part.

(2) For the purposes of this Part, businesses or undertakings carried on by corporations that are taken to be related to each other for the purposes of the Companies (New South Wales) Code may be taken to constitute one business or undertaking or separate businesses or undertakings.

(3) In this Part, references to minimum conditions of employment are references to those fixed by section 13K, as amended or replaced from time to time by regulations made pursuant to section 13L.

Division 2 - Enterprise agreements

Nature of an enterprise agreement

13B. An enterprise agreement is an agreement made in accordance with this Part for the purpose of regulating (wholly or partially) the conditions of employment of persons employed in a single enterprise in any one or more crafts, occupations or callings.

Effect of a registered enterprise agreement

13C. (1) A registered enterprise agreement, as in force for the time being, is enforceable as if it were an award.

(2) The provisions of a registered enterprise agreement, as in force for the time being, prevail over:

(a) the provisions of any award or industrial agreement; and

(b) any orders or directions made or given by the commission, conciliation commissioners or conciliation committees,

**SCHEDULE 1 - AMENDMENTS TO THE PRINCIPAL ACT
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that deal with the same matters, in so far as they purport to apply to a person bound by the agreement.

(3) While a registered enterprise agreement is in force, the jurisdiction, powers and authorities of the commission, conciliation commissioners and conciliation committees relating to conditions of employment fixed by the agreement are exerciseable only with the concurrence of both parties to the agreement.

Parties to an enterprise agreement

13D. An enterprise agreement may be made between a single enterprise employer and:

- (a) a single industrial association registered for the enterprise; or
- (b) one or more industrial unions representing employees of the enterprise or representing prospective employees of the enterprise.

Content of an enterprise agreement

13E. (1) An enterprise agreement must include provisions:

- (a) identifying the parties to the agreement; and
- (b) fixing conditions of employment of a kind capable of being fixed by State awards; and
- (c) identifying each award (if any) that fixes conditions of employment that will apply to employees bound by the agreement but are conditions that are not fixed by the agreement; and
- (d) setting out procedures to be followed by the parties to avoid grievances and to settle them, if they should arise; and
- (e) declaring that the agreement was not entered into by either of the parties under duress.

(2) An enterprise agreement must include provisions fixing, or identifying an award that fixes, conditions of each

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of the kinds referred to in section 13K (minimum conditions of employment) for each of the employees the agreement will bind.

(3) An enterprise agreement applies to conditions of employment only at such places as the enterprise concerned was or was intended to be, or could have reasonably been expected to be, carried on when the agreement was made.

(4) Despite subsection (3), an enterprise agreement may provide that it applies only to conditions of employment at a place or places specified in the agreement.

Formal considerations

13F. An enterprise agreement is required to be in writing and signed by or on behalf of all persons who are expressed to be parties to it.

Term of enterprise agreement

13G. (1) An enterprise agreement is required to specify its term, which is to be not less than 12 months (except in the case of one that amends another such agreement with 12 months or less to run) nor more than 3 years.

(2) Unless both of the parties agree to terminate the agreement during its term or after its term has expired, the agreement can be terminated only at or after the expiration of its term and only by one of the parties giving the other at least 3 months' notice of intention to terminate.

(3) Termination of the agreement takes effect only after the registrar has been given written notice of an agreement to terminate or of the service of a notice of intention to terminate.

**SCHEDULE 1 - AMENDMENTS TO THE PRINCIPAL ACT
PROVIDING FOR ENTERPRISE BARGAINING - *continued***

Variation of enterprise agreement

13H. (1) The parties to an enterprise agreement may by mutual consent make a further such agreement that varies the former agreement.

(2) An enterprise agreement as varied from time to time must comply with the requirements made by this Division.

Registration of enterprise agreement required

13I. (1) The registrar must register each enterprise agreement lodged with the registrar for registration unless:

- (a) the agreement does not comply with a requirement made by this Division; or
- (b) the registrar is satisfied that the agreement was entered into under duress.

(2) The registrar is to refuse to register an enterprise agreement if the agreement fixes, or identifies an award that fixes, a condition of employment of a kind referred to in section 13K (minimum conditions of employment) that, in the opinion of the registrar, is less favourable to an employee intended to be bound by the agreement than the minimum condition of the same kind applicable to the employee.

(3) An enterprise agreement has no force or effect unless it is registered.

Persons bound by enterprise agreement

13J. A registered enterprise agreement, as in force for the time being, is binding on:

- (a) the parties to the agreement; and
- (b) every member for the time being of the industrial association or any industrial union that is a party to the agreement, being a member to whom the agreement applies; and
- (c) each person from time to time employed in the enterprise for which the agreement was made who,

**SCHEDULE 1 - AMENDMENTS TO THE PRINCIPAL ACT
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although not a member of such an industrial association or industrial union, is employed in a craft, occupation or calling to which the agreement relates; and

- (d) each successor to the enterprise employer who was a party to the agreement.

Minimum conditions of employment

13K. (1) Subject to section 13L, the following are the minimum conditions of employment applicable to an employee who is bound by a registered enterprise agreement:

- (a) in respect of wages:
 - (i) for a full-time adult employee - a guaranteed weekly wage of \$286.30 (or such other amount as may be prescribed for the time being by a regulation the making of which was recommended by the Minister in accordance with section 13L); and
 - (ii) for a full-time junior employee of the specified age - a guaranteed weekly wage of the following proportions (or such other proportions as may be prescribed for the time being by a regulation the making of which was so recommended) of the current guaranteed weekly wage for a full-time adult employee:

Under 16 years	50%
16 years	55%
17 years	65%
18 years	75%
19 years	80%
20 years	90%
- (b) in respect of ordinary hours of employment - a maximum of 40 hours per week averaged over a 12 week period;

**SCHEDULE 1 - AMENDMENTS TO THE PRINCIPAL ACT
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- (c) in respect of hourly rates of pay for a part-time employee (being an employee entitled to annual leave and sick leave) - a guaranteed average hourly rate of pay calculated by dividing the guaranteed adult or junior weekly wage (according to the age of the employee) for the time being by the maximum weekly ordinary hours of employment for the time being;
- (d) in respect of hourly rates of pay for a casual employee (being an employee not entitled to annual leave or sick leave) - a guaranteed average hourly rate of pay at the rate of 109.6% (or such other proportion as may be prescribed for the time being by a regulation the making of which was recommended by the Minister in accordance with section 13L) of the guaranteed average hourly rate of pay for a part-time employee for the time being;
- (e) in respect of sick leave - a minimum of 1 week on full pay for each year of service with the enterprise employer concerned;
- (f) in respect of minimum redundancy payments for employees, other than:
 - (i) casual employees; and
 - (ii) employees who, at the time of the termination, have not been employed for at least 12 months by the enterprise employer concerned; and
 - (iii) employees who, at the time of the termination, are in an enterprise workforce of less than 15 employees,the following scale is applicable:

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Length of continuous service by employee	Rate for calculation of amount of severance payment	
	If employee under 45 years of age	If employee 45 or more years of age
Less than 1 year	Nil	Nil
1 year and more but less than 2 years	4 weeks' pay	5 weeks' pay
2 years and more but less than 3 years	6 weeks' pay	7.5 weeks' pay
3 years and more but less than 4 years	7 weeks' pay	8.75 weeks' pay
4 years and more	8 weeks' pay	10 weeks' pay

(2) A minimum condition that is applicable to an employee who is bound by a registered enterprise agreement is to be taken to be fixed by the agreement unless the same condition, or a condition of the same kind that is more favourable to the employee, is fixed for the employee:

- (a) by an express provision of the agreement; or
- (b) by a provision of an award, being an award applicable to the employee; or
- (c) by an order or a direction made or given by the commission, a conciliation commissioner or a conciliation committee, being an order or a direction applicable to the employee.

(3) Nothing in this Division affects the application of Part 14A (relating to maternity leave) or of the Annual Holidays Act 1944, the Long Service Leave Act 1955 or the

**SCHEDULE 1 - AMENDMENTS TO THE PRINCIPAL ACT
PROVIDING FOR ENTERPRISE BARGAINING - *continued***

Long Service Leave (Metalliferous Mining Industry) Act 1963 to an employee bound by a registered enterprise agreement.

Review and variation of minimum conditions

13L. (1) The Minister is required, at yearly intervals after the commencement of this section, to review the adequacy or otherwise of the guaranteed weekly wage referred to in section 13K (1) (a) (i) applicable for the time being to full-time adults.

(2) For the purpose of reviewing that wage, the Minister is required:

(a) to nominate, by order published in the Gazette, 5 awards that, in the Minister's opinion, fix the lowest weekly rates of pay for full-time adults and which regulate the working conditions of a significant number of employees; and

(b) to compare the average of those lowest weekly rates of pay at the time of the review with that wage.

(3) If that average rate differs from that wage, the Minister is to recommend the making of a regulation to vary the guaranteed weekly wage to the amount equivalent to that average rate.

(4) The Minister is required, at 2 yearly intervals after the commencement of this section, to review (and may, at such other times as the Minister thinks fit, review) the adequacy or otherwise of the minimum conditions fixed by section 13K, other than the guaranteed weekly wage referred to in section 13K (1) (a) (i).

(5) For the purpose of reviewing each of the percentages fixed for the time being for full-time junior employees and referred to in section 13K (1) (a) (ii), the Minister is required:

(a) to compare the average of the corresponding percentages fixed at the time of the review by the

SCHEDULE 1 - AMENDMENTS TO THE PRINCIPAL ACT
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awards nominated for the time being under subsection (2) with the percentage so fixed; and

- (b) if that average percentage differs from the percentage so fixed, to consider whether the Minister should recommend the making of a regulation to vary the percentage so fixed to the average percentage.

(6) For the purpose of reviewing the percentage fixed for the time being for a casual employee and referred to in section 13K (1) (d), the Minister is required to consider whether the Minister should recommend the making of a regulation to vary the percentage so fixed to any different calculated percentage that results from the application of the following formula:

$$\text{Calculated percentage} = 100 + \frac{(x+y)}{52} \times \frac{100}{1}$$

where:

x represents the minimum number of weeks of annual leave fixed by the Annual Holidays Act 1944 at the time of the review;

y represents the minimum number of weeks for a year of sick leave fixed by or under this Division at that time.

(7) A review required to be conducted under this section is to be conducted between April and June of the relevant year.

(8) The Minister may request the assistance of the commission in conducting any review under this section and, when the commission is requested to do so for that purpose, the commission is required to supply the Minister, in accordance with the Minister's directions, with such information as may be requested by the Minister.

(9) A regulation made on the recommendation of the Minister and expressed to have been made as a consequence of a review under this section may amend or

**SCHEDULE 1 - AMENDMENTS TO THE PRINCIPAL ACT
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replace any condition of employment fixed for the time being by section 13K (1) (b), (c), (e) or (f) or replace any such condition with a new condition of the same kind.

(10) A regulation recommended by the Minister under this section as a consequence of a review takes effect (or is to be treated as having taken effect) on 1 July of the year in which the review was conducted.

(11) The first review required by this section of the guaranteed weekly wage referred to in section 13K (1) (a) (i) is to be conducted in 1990 and the first 2 yearly reviews required by this section are to be conducted in 1991.

Access to agreements through registrar

13M. The registrar may permit any of the following persons (and no other persons) to have access to, or to be supplied with a copy of, a registered enterprise agreement:

- (a) a person on whom the agreement is binding;
- (b) a person or body carrying into effect provisions of this Act for enforcing the agreement;
- (c) a person or body carrying into effect provisions of this Act with the concurrence of the parties to the agreement;
- (d) a person, or any person of a class of persons, prescribed for the purposes of this section.

Notice to be given of working conditions

13N. (1) An employer of employees whose conditions of employment are affected by a registered enterprise agreement must:

- (a) as soon as is practicable, cause a copy of the agreement to be given to each employee on whom the agreement is binding; and
- (b) cause a copy of the agreement, as in force for the time being, to be fixed and maintained in a conspicuous place in all premises to which the

**SCHEDULE 1 - AMENDMENTS TO THE PRINCIPAL ACT
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agreement applies so as to be easily read by employees in those premises.

(2) Before an employer bound by a registered enterprise agreement engages the services of a person as an employee who will be bound by conditions of employment fixed by a registered enterprise agreement, the employer must give the person:

- (a) access to a copy of the agreement for perusal by the person; or
- (b) notice of the existence of the agreement and an accurate summary of the provisions of the agreement that would be relevant to the person as an employee.

Maximum penalty: 5 penalty units.

Restriction on duplication of special conditions

13O. (1) In the making of awards or orders, and in the giving of directions under this Act, the commission, conciliation commissioners and conciliation committees are not to insert or impose known provisions of enterprise agreements.

(2) Despite subsection (1), such a provision may be inserted or imposed if the commission, conciliation commissioner or conciliation committee concerned is satisfied that giving effect to the provision would not be contrary to principles established by the commission that apply in relation to the determination of wages and conditions of employment.

Division 3 - Enterprise bargaining units

Purpose of associations of employees

13P. Persons employed in a single enterprise in one or more crafts, occupations or callings may form and register an association of employees to facilitate the making,

**SCHEDULE 1 - AMENDMENTS TO THE PRINCIPAL ACT
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registration, variation and enforcement of an enterprise agreement.

Nature of associations of employees

13Q. (1) An association of employees formed for the purposes of this Part may be registered in respect of one craft, occupation or calling or two or more crafts, occupations or callings.

(2) The membership of an association of employees formed for the purposes of this Part is limited to persons employed in a single enterprise but may extend to persons who are employed at all, or any one or more, of the places where the enterprise is carried on.

(3) An association of employees is not entitled to be registered if any employee who would be bound by a registered enterprise agreement to which the association could become a party if it were registered is already bound by a registered enterprise agreement.

Application for registration of association of employees

13R. (1) If at least 65% of the employees of an enterprise who would be bound by a registered enterprise agreement to which the association of employees could become a party vote in favour of forming an association of employees for the enterprise, an application may be lodged with the registrar for registration of the association of employees.

(2) Any such vote is to be taken by a secret ballot conducted by a person who:

- (a) is independent of anyone who would be bound by a registered enterprise agreement to which the association of employees could become a party; and
- (b) meets any requirement that may be imposed for the purposes of this section by the regulations.

**SCHEDULE 1 - AMENDMENTS TO THE PRINCIPAL ACT
PROVIDING FOR ENTERPRISE BARGAINING - *continued***

(3) Despite subsection (2), such a ballot may be conducted by any person on behalf of the employees who are entitled to vote in the ballot.

Registration of association of employees

13S. (1) The registrar must register an association of employees as an industrial association if an application for its registration is lodged in accordance with this Division with the registrar, unless the registrar is satisfied that there was an irregularity concerning the ballot.

(2) Such an association is not to be registered earlier than 7 days after the application was lodged.

(3) If at any time before an association of employees is registered, the registrar receives a written complaint from at least 20% of the employees who would be bound by a registered enterprise agreement to which the association could become a party, particularising alleged irregularities in the conduct of the ballot taken in respect of the association and requesting that a further secret ballot be conducted by an independent person, the registrar (if of the opinion that such action is justified) is to refrain from registering the association and may arrange with the employees concerned:

- (a) for the conduct of a further secret ballot, as requested by the submission; and
- (b) for evidence of the result of the further ballot to be supplied to the registrar.

(4) The result of any such further ballot is to be disregarded if the registrar is not satisfied that it has been conducted in accordance with the registrar's directions.

Registered name of association

13T. The corporate name under which an association of employees is to be registered as an industrial association is to contain the words "industrial association of employees"

**SCHEDULE 1 - AMENDMENTS TO THE PRINCIPAL ACT
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and the name of the enterprise in which its members are employed.

Effect of registration

13U. (1) While it is registered, an industrial association is, for the purposes of this Act, a body corporate under its registered name.

(2) An industrial association may be a signatory to an enterprise agreement as agent for all employees who will be bound by the agreement if it is registered, whether or not all of those employees are members of the association.

(3) The provisions of this and any other Act, and of statutory instruments made under this or any other Act, that apply to industrial unions and trade unions, and to their officers and members, apply to industrial associations and associations of employees of enterprises, and to their officers and members, except to the extent, if any:

- (a) that express provision is made by or under this or any other Act modifying or excluding the application of those provisions; or
- (b) that the application of any of those provisions is modified or excluded by the regulations.

(4) The reference in subsection (3) to provisions that apply to industrial unions and trade unions, and to their officers and members, includes a reference to provisions that confer powers, authorities, duties or functions on the commission or the registrar with respect to industrial unions and trade unions, and their officers and members.

(5) Although, subject to subsection (3), an industrial association is entitled to the benefits of, and has the responsibilities of, an industrial union, it does not have the status of an industrial union and is not entitled to appear in proceedings unless the proceedings relate to:

**SCHEDULE 1 - AMENDMENTS TO THE PRINCIPAL ACT
PROVIDING FOR ENTERPRISE BARGAINING - *continued***

- (a) a registered enterprise agreement; or
- (b) the registration of the association and matters that might affect that registration; or
- (c) the property or business affairs of the association.

Cancellation of registration of association

13V. (1) An industrial association is not entitled to continue to be registered if:

- (a) an enterprise agreement that is binding on members of the association is not made and registered by the registrar within 6 months following the date of the association's registration; or
- (b) where an enterprise agreement that is binding on members of the association has been terminated, a fresh enterprise agreement that is binding on members of the association is not made and registered by the registrar within 6 months of the date of the termination.

(2) The registrar may cancel the registration of an industrial association that is not entitled to continue to be registered.

Rationalising union coverage: voting for change

13W. (1) Either:

- (a) one or more industrial unions representing at least 50% of the persons employed in an enterprise; or
- (b) at least the prescribed number of persons employed in the enterprise,

may arrange for the holding of a secret ballot to decide whether the union coverage for the enterprise should be rationalised by having all of those persons whose conditions of employment are of a kind capable of being fixed by State awards represented by a single industrial union.

SCHEDULE 1 - AMENDMENTS TO THE PRINCIPAL ACT
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- (2) Any such ballot is to be conducted by a person who:
 - (a) is independent of the persons employed in the enterprise; and
 - (b) meets any requirement that may be imposed for the purposes of this section by the regulations.
- (3) Despite subsection (2), such a ballot may be conducted by any person on behalf of the employees who are entitled to vote in the ballot.
- (4) Only persons employed in the enterprise whose conditions of employment are of a kind capable of being fixed by State awards are eligible to vote in such a ballot.
- (5) In this section, "prescribed number" means:
 - (a) if there are fewer than 80 persons employed in the enterprise - 4; or
 - (b) if there are not fewer than 80, but not more than 5000, persons so employed - 5% of those employees; or
 - (c) if there are more than 5000 persons so employed - 250.

Rationalising union coverage: effect of vote in favour

13X. (1) If at least 65% of the employees who vote in the ballot vote in favour of being represented by a single registered union, that union is required:

- (a) to notify the registrar and the other union or unions concerned in writing of the result of the ballot; and
 - (b) to supply the registrar with such information concerning the ballot and related matters as the registrar may request.
- (2) The registrar must register particulars of any such vote in favour of being represented by a single registered union notified to the registrar, unless the registrar is satisfied that there was an irregularity concerning the ballot.

**SCHEDULE 1 - AMENDMENTS TO THE PRINCIPAL ACT
PROVIDING FOR ENTERPRISE BARGAINING - *continued***

(3) Such particulars are not to be registered earlier than 14 days after the registrar is notified of the result of the ballot.

(4) When the registrar, under this section, registers particulars of a vote, then, unless satisfied that no alteration of the rules of any industrial union concerned is necessary, the registrar is required, after giving each such union an opportunity to be heard, to specify such alterations (if any) of the rules of any such union as are, in the registrar's opinion, necessary to give effect to the vote.

(5) An alteration of the rules of an industrial union specified under this section takes effect on the day on which the registrar registers particulars of the vote or at a later time specified by the registrar.

(6) The registrar may do such other things as are necessary to give effect to the vote, including the alteration of the copy of any industrial union's rules held by the registrar.

(7) The copy of an industrial union's rules altered under this section by the registrar is, to the extent of the alteration, to be taken to be the official rules of the union.

Complaints about irregularities before ballot

13Y. At any time before particulars of a vote taken at the ballot are registered under section 13X by the registrar, an industrial union whose membership may be affected by a ballot proposed to be or that has been conducted under section 13W may lodge a written complaint with the registrar, particularising alleged irregularities in the procedure followed before the ballot is proposed to be or was conducted.

Complaints about irregularities during ballot

13Z. (1) If, at any time before particulars of a vote taken at a ballot are registered under section 13X, the registrar receives a written complaint from at least 20% of the

**SCHEDULE 1 - AMENDMENTS TO THE PRINCIPAL ACT
PROVIDING FOR ENTERPRISE BARGAINING - *continued***

employees eligible to vote in the ballot particularising alleged irregularities in the conduct of the ballot and requesting that a further secret ballot be conducted by an independent person, the registrar (if of the opinion that such action is justified) is to refrain from registering the particulars and may arrange with the employees concerned:

- (a) for the conduct of a further secret ballot, as requested by the submission; and
 - (b) for evidence of the result of the further ballot to be supplied to the registrar.
- (2) The result of any such further ballot is to be disregarded if the registrar is not satisfied that it has been conducted in accordance with the registrar's directions.

Registrar may require further information

13AA. (1) For the purpose of:

- (a) investigating a written complaint authorised by this Division; or
- (b) ensuring the proper conduct of a secret ballot arranged by the registrar under this Division,

the registrar may require any person concerned to produce records relating to membership of a relevant industrial union or to supply other relevant information to the registrar.

(2) If the registrar is satisfied the complaint has been made out or that the secret ballot will not be or has not been properly conducted, the registrar may give notice to the parties concerned that the ballot must be postponed or abandoned or that the results of the ballot will be disregarded.

Frequency of ballots

13AB. (1) The registrar is required to disregard the results of a ballot conducted under a provision of this Division at any time with respect to employees of an

**SCHEDULE 1 - AMENDMENTS TO THE PRINCIPAL ACT
PROVIDING FOR ENTERPRISE BARGAINING - *continued***

enterprise if there has been another ballot conducted under the same provision with respect to employees of the enterprise during the period of 2 years immediately before that time.

(2) In this section, "ballot" does not include a ballot arranged by the registrar.

**SCHEDULE 2 - OTHER AMENDMENTS TO THE PRINCIPAL
ACT**

(Sec. 4)

(1) Section 5 (Definitions):

(a) Section 5 (1):

Omit the definition of "Agreement".

(b) Section 5 (1):

After the definition of "Employer", insert:

"Enterprise agreement" means an enterprise agreement registered under Part 1C.

(c) Section 5 (1), definition of "Industrial agreement".

After "this Act", insert "before the commencement of Part 1C".

(d) Section 5 (1):

After the definition of "Industrial agreement", insert:

"Industrial association" means an industrial association registered under Part 1C.

(2) Part 1A, heading:

Omit the heading to sections 6-10A, insert instead:

PART 1A - INDUSTRIAL UNIONS

SCHEDULE 2 - OTHER AMENDMENTS TO THE PRINCIPAL
ACT - *continued*

(3) Part 1B, heading:

Omit the heading to sections 11 and 13, insert instead:

PART 1B - INDUSTRIAL AGREEMENTS

(4) Section 11:

Omit the section, insert instead:

Effect of certain industrial agreements

11. (1) An industrial agreement, or a variation of an industrial agreement, in force immediately before the commencement of Part 1C continues in force after that commencement:

(a) for the residue of the term for which it was made unless earlier rescinded in writing by the parties who were bound by it immediately before that commencement; and

(b) if not so rescinded - as provided by section 13, except to the extent that it is inconsistent with an enterprise agreement in force under Part 1C.

(2) An industrial agreement continued in force under this section:

(a) is binding on the parties who were bound by it immediately before the commencement of Part 1C; and

(b) may be enforced under this Act.

(5) Section 13 (**Continuance in force of industrial agreements**):

(a) Omit "varied or".

(b) At the end of section 13, insert:

(2) An industrial agreement may not be amended after the commencement of Part 1C and any purported amendment after that commencement has no effect.

SCHEDULE 2 - OTHER AMENDMENTS TO THE PRINCIPAL
ACT - *continued*

(6) Section 35A:

After section 35, insert:

Demarcation: orders of the commission

35A. (1) Without limiting the powers of the commission in relation to demarcation, the commission, on the application of the Minister, an employer or an industrial union, or on its own initiative, may make one or more of the following orders:

- (a) an order that an industrial union has the right, to the exclusion of another industrial union or other industrial unions, to represent under this Act the industrial interests of a particular class or group of employees who are eligible for membership of the union;
- (b) an order that an industrial union that does not have the right to represent under this Act the industrial interests of a particular class or group of employees has that right;
- (c) an order that an industrial union does not have the right to represent under this Act the industrial interests of a particular class or group of employees who are eligible for membership of the union.

(2) The power to make orders under this section is to be used for the purposes of:

- (a) rationalising industrial union coverage for employees of enterprise employers (within the meaning of Part 1C); and
- (b) allowing representation of employees by a single industrial union at new places of employment or places where the nature of work has been, or is intended to be, substantially changed,

and may be used for such other purposes as the commission considers appropriate.

(3) In considering whether to make an order under this section, the commission:

SCHEDULE 2 - OTHER AMENDMENTS TO THE PRINCIPAL
ACT - *continued*

- (a) must have regard to any agreement of which the commission becomes aware and to any order of the commission that deals with the right of an industrial union to represent under this Act the industrial interests of a particular class or group of employees; and
 - (b) may seek advice on any relevant matter from any appropriate State council or association that is effectively representative of a significant number of employers or employees in a range of industries across the State.
- (4) An order made under this section may be of general application or expressed to be subject to specified conditions or limitations.
- (5) If the commission makes an order under this section, then, unless satisfied that no alteration of the rules of any industrial union concerned is necessary, the commission is required, after giving each such union an opportunity to be heard, to specify such alterations (if any) of the rules of any such union as are, in the commission's opinion, necessary to give effect to the order.
- (6) An alteration of the rules of an industrial union specified under this section takes effect on the day on which the order is made or at a later time specified by the commission.
- (7) The registrar may do such other things as are necessary to give effect to an order made under this section, including the alteration of the copy of any industrial union's rules held by the registrar.
- (8) The copy of an industrial union's rules altered under this section by the registrar is, to the extent of the alteration, to be taken to be the official rules of the union.
- (9) The jurisdiction, powers and authorities of the commission under this section may be exercised by any member of the commission.

**SCHEDULE 2 - OTHER AMENDMENTS TO THE PRINCIPAL
ACT - *continued***

- (7) **Section 54 (Existing awards and industrial agreements):**
 - (a) Section 54 (1):
Before "agreements", insert "industrial".
 - (b) Before "agreement" wherever occurring, insert "industrial".

- (8) **Section 55 (Awards and industrial agreements made after appointed day):**
 - (a) Before "agreements" wherever occurring, insert "industrial".
 - (b) Before "agreement" wherever occurring, insert "industrial".

- (9) **Section 56 (Retrospective awards and industrial agreements):**
 - (a) Section 56 (1):
Before "agreements", insert "industrial".
 - (b) Before "agreement" wherever occurring, insert "industrial".

- (10) **Section 58 (Action on variation of basic wage):**
 - (a) Before "agreement" wherever occurring, insert "industrial".
 - (b) Before "agreements" wherever occurring, insert "industrial".

- (11) **Section 63 (Ordinary working hours):**
 - (a) Section 63 (1):
Omit "The ordinary", insert instead "Except where working hours are provided for in an enterprise agreement, the ordinary".
 - (b) Section 63 (1):
Omit "and by the parties in making agreements", insert instead "affecting working hours not provided for in an enterprise agreement".
 - (c) Section 63 (1) (a):
Before "agreement" where firstly and secondly occurring, insert "industrial".

SCHEDULE 2 - OTHER AMENDMENTS TO THE PRINCIPAL
ACT - *continued*

- (d) Section 63 (1) (a):
Omit "agreement or", insert instead "an".
- (e) Section 63 (1) (a):
After "consent", insert "or by an enterprise agreement".
- (f) Section 63 (1) (c):
Before "agreement" wherever occurring, insert "industrial".
- (g) From section 63 (1) (c), omit "No", insert instead "Except where working hours are provided for in an enterprise agreement, no".
- (h) Section 63 (1) (f):
Before "agreement", insert "industrial".
- (i) Section 63 (1) (g):
After "subsections", insert "(1A)".
- (j) After section 63 (1), insert:
(1A) Subsection (1) (g) does not authorise the commission in court session to make an award affecting anything in an enterprise agreement.
- (k) Section 63 (2A):
Before "agreement" wherever occurring, insert "industrial".
- (l) Section 63 (3):
Omit "Notwithstanding section 11 (1), an industrial agreement which -", insert instead "An industrial agreement in force under section 11 which:".
- (m) Section 63 (3) (a):
Omit "is", insert instead "was".
- (n) Omit section 63 (4), insert instead:
(4) If, before the commencement of Part 1C, an industrial agreement had not been referred to the commission in court session under this subsection as in force before that commencement, the registrar must, as soon as practicable after that commencement, refer the agreement to the commission in court session to consider whether it should be endorsed with the certificate referred to in subsection (3).

SCHEDULE 2 - OTHER AMENDMENTS TO THE PRINCIPAL
ACT - *continued*

- (o) Section 63 (6):
Before "agreement" wherever occurring, insert "industrial".
- (p) Section 63 (7):
Before "agreement" where secondly occurring, insert "industrial".
- (12) Section 63A (**Variation of certain awards and industrial agreements**):
Before "agreement" wherever occurring, insert "industrial".
- (13) Section 63C (**Penalty**):
After "agreement", insert "(other than an enterprise agreement)".
- (14) Section 66:
Omit the section, insert instead:

Overtime

66. (1) For the purposes of this Part, "overtime" means time worked in excess of the days or hours limited by or under this Act.

(2) Overtime in any industry may be permitted by the terms of an award and is required to be paid at the rate fixed by an award, except where working hours are provided for in an enterprise agreement.

(3) Overtime permitted by an industrial agreement in force under section 11 is required to be paid at a rate fixed by the agreement.
- (15) Section 67 (**Restriction on overtime**):
 - (a) Omit "or agreement".
 - (b) Omit "or the parties may, by agreement,".
 - (c) Omit "or to the parties in the case of an agreement,".

**SCHEDULE 2 - OTHER AMENDMENTS TO THE PRINCIPAL
ACT - *continued***

- (16) **Section 68 (Overtime rates):**
Omit "or agreement" wherever occurring.
- (17) **Section 88C (Sick leave):**
Section 88C (2), (2A), (3), (9):
Omit "or industrial agreement" wherever occurring.
- (18) **Section 88D (Equal pay for males and females in certain circumstances):**
(a) Section 88D (1), (7) (a), (8):
Omit "or industrial agreement" wherever occurring.
(b) Section 88D (9):
Omit "and industrial agreements" wherever occurring.
- (19) **Section 88E (Certain persons to be employees):**
Section 88E (1) (d):
Before "agreement", insert "industrial".
- (20) **Section 88F (Power of commission to declare certain contracts void):**
After section 88F (4), insert:
(5) This section does not apply to an enterprise agreement.
- (21) **Section 88FA (Regulation of certain contracts):**
After section 88FA (9), insert:
(9A) This section does not apply to an enterprise agreement.
- (22) **Section 88G (Provisions relating to automation):**
Omit "or industrial agreement" wherever occurring.
- (23) **Section 90B (Obsolete awards etc.):**
Before "agreement" wherever occurring, insert "industrial".

SCHEDULE 2 - OTHER AMENDMENTS TO THE PRINCIPAL
ACT - *continued*

- (24) Part 8B, Division 1, heading:
Omit "or agreements".
- (25) Section 91T (Provisions in awards):
Omit "or industrial agreement" wherever occurring.
- (26) Section 92 (Recovery of wages etc.):
 - (a) Section 92 (1) (a):
After "award" where firstly occurring, insert "or an enterprise agreement".
 - (b) Section 92 (1) (a):
Omit "award or", insert instead "award, enterprise agreement".
 - (c) Section 92 (1) (b):
After "award" wherever occurring, insert ", enterprise agreement".
 - (d) Section 92 (2) (b):
After "award" wherever occurring, insert ", enterprise agreement".
 - (e) Section 92 (2A) (b):
After "award", insert ", enterprise agreement".
 - (f) Section 92 (2A) (c):
After "award" where firstly occurring, insert ", enterprise agreement".
 - (g) Section 92 (2A) (c):
After "an award,", insert "enterprise agreement".
 - (h) Section 92 (2D) (b):
After "award", insert ", enterprise agreement".
 - (i) Section 92 (4A):
After "union", insert "or industrial association".
 - (j) Section 92 (7):
After "award" where firstly occurring, insert ", enterprise agreement".

SCHEDULE 2 - OTHER AMENDMENTS TO THE PRINCIPAL
ACT - *continued*

- (k) Section 92 (7):
After "relates", insert ", or the secretary of the industrial association, or of an industrial union, that is a party to the enterprise agreement".
 - (l) Section 92 (9) (a):
After "award" where firstly occurring, insert ", enterprise agreement".
 - (m) Section 92 (9) (a):
Omit "industrial agreement" where secondly occurring, insert instead "enterprise agreement, or the registration of an enterprise agreement,".
 - (n) Section 92 (9) (a):
Omit "that award or agreement", insert instead "the current award, enterprise agreement or industrial agreement".
 - (o) Section 92 (9) (a):
Omit "the award or industrial agreement shall", insert instead "an award or enterprise agreement, or that an enterprise agreement, must".
- (27) Section 92A (Certain payments may be made by cheque):
- (a) Section 92A (2A) (a):
Omit "such industrial union or unions of employees which", insert instead "each industrial union, or the industrial association, that".
 - (b) Section 92A (2A) (b):
Omit "union", insert instead "industrial union or industrial association".
 - (c) Section 92A (2A) (c):
Omit "the objecting union or unions", insert instead "each objecting industrial union, or the objecting industrial association,".

**SCHEDULE 2 - OTHER AMENDMENTS TO THE PRINCIPAL
ACT - *continued***

- (28) **Section 92AA (Certain payments may be made by electronic funds transfer):**
Section 92AA (1) (b):
After "agreement," insert "enterprise agreement".
- (29) **Section 93 (Penalty for breach of award etc.):**
(a) Section 93 (1), (3):
After "award," wherever occurring, insert "enterprise agreement".
(b) Section 93 (2):
After "award" wherever occurring, insert ", enterprise agreement".
(c) Section 93 (4):
After "award" where firstly occurring, insert ", an enterprise agreement".
(d) Section 93 (4):
After "agreement" where lastly occurring, insert ", or by the secretary of the industrial association, or of an industrial union, that is a party to the enterprise agreement".
- (30) **Section 94 (Secretary of union etc. receiving money for breach of award etc.):**
(a) After "employees," insert "industrial association".
(b) After "award", insert ", enterprise agreement".
- (31) **Section 95 (Penalty for unlawful dismissal):**
(a) Section 95 (1) (a) (i):
After "union", insert ", or of an industrial association".
(b) Section 95 (1) (b):
After "agreement", insert ", an enterprise agreement".
(c) Section 95 (1) (b1):

**SCHEDULE 2 - OTHER AMENDMENTS TO THE PRINCIPAL
ACT - *continued***

After "award", insert ", an enterprise agreement".

(d) At the end of section 95 (1) (d), insert:

; or

(e) after being unreasonably refused leave without pay for the purpose, is absent from work through being engaged in other duties as a member of an industrial association in respect of a matter related to the enterprise the subject of an enterprise agreement to which the industrial association is a party,

(32) **Section 95A (Particulars of wages to be furnished to employees):**

(a) Section 95A (1):

After "award" where firstly occurring, insert ", enterprise agreement".

(b) Section 95A (1):

Omit "award or agreement" wherever occurring, insert instead "award, enterprise agreement or industrial agreement".

(c) Section 95A (2) (b):

Omit "the industrial union or industrial unions", insert instead "each industrial union or the industrial association".

(33) **Section 96 (Time-sheets and pay-sheets to be kept):**

Section 96 (1) (a):

After "award", insert ", enterprise agreement".

(34) **Section 96A (Power to amend):**

Section 96A (1):

After "award," where firstly and secondly occurring, insert "enterprise agreement,".

SCHEDULE 2 - OTHER AMENDMENTS TO THE PRINCIPAL
ACT - *continued*

- (35) Section 99 (**Illegal strikes**):
After section 99 (b), insert:
(c) Any strike by employees bound by an enterprise agreement.
- (36) Section 100 (**Penalty for illegal strike**):
After "employees,", insert "or any industrial association,".
- (37) Section 101A (**Defence to proceedings under sec. 100**):
Section 101A (b):
After "union" wherever occurring, insert "or industrial association".
- (38) Section 127 (**Appointment and powers of inspectors**):
(a) Section 127 (1):
After "force", insert "or in respect of an enterprise, within the meaning of Part 1C, that is the subject of an enterprise agreement".
(b) Section 127 (1) (a), (b), (c):
After "industry" wherever occurring, insert "or enterprise".
(c) Section 127 (1):
After "award" where lastly occurring, insert ", enterprise agreement".
- (39) Section 129A (**Right of entry**):
After section 129A (6), insert:
(7) This section applies in relation to an officer of an industrial association in the same way as it applies in relation to an officer of an industrial union of employees, and so applies as if a reference in the other provisions of this section:
(a) to such a union were a reference to an industrial association; and

SCHEDULE 2 - OTHER AMENDMENTS TO THE PRINCIPAL ACT - *continued*

- (b) to an industry were a reference to the enterprise the subject of a registered enterprise agreement to which the industrial association is a party, and
 - (c) a reference to an industrial agreement were a reference to an enterprise agreement.
- (40) **Section 153B (Construction of this Part):**
Section 153B (1), (3):
After "award," wherever occurring, insert "enterprise agreement, industrial".

SCHEDULE 3 - AMENDMENTS TO OTHER ACTS

(Sec. 5)

Annual Holidays Act 1944 No. 31

(1) **Section 2 (Definitions):**

Section 2 (1):

Omit the definition of "Agreement", insert instead:

"Agreement" means:

- (a) an industrial agreement in force under the Industrial Arbitration Act 1940; or
 - (b) an enterprise agreement registered under that Act.
- (2) **Section 13 (Recovery of holiday pay):**
After section 13 (3), insert:
- (4) In the application of subsection (3) in relation to work for which the price or rate has been fixed by an enterprise agreement registered under the Industrial Arbitration Act 1940, the reference to the secretary or other officer of an industrial union concerned in the industry to which the agreement relates is to be read as a reference to the secretary or other officer of an industrial association or industrial union that is a party to the agreement.

SCHEDULE 3 - AMENDMENTS TO OTHER ACTS - *continued*

Long Service Leave Act 1955 No. 38

(1) **Section 3 (Definitions):**

Section 3 (1):

After the definition of "Employer", insert:

"Enterprise agreement" means an enterprise agreement registered under the Industrial Arbitration Act 1940.

(2) **Section 4 (Long service leave):**

(a) Section 4 (2) (a1) (i):

After "Acts" where secondly occurring, insert "or by an enterprise agreement".

(b) Section 4 (2) (a1) (iii):

After "award", insert ", enterprise agreement".

(c) Section 4 (13) (a):

At the end of the definition of "Award", insert:

; and

(c) an enterprise agreement.

(3) **Section 5 (Exemptions):**

Section 5 (1) (a):

After "this Act," insert "or by an enterprise agreement,".

(4) **Section 12 (Recovery of long service leave pay):**

After section 12 (2), insert:

(3) Subsection (2) applies in relation to work for which the price or rate has been fixed by an enterprise agreement in the same way as it applies in relation to other work, except that the reference in subsection (2) to an industrial union concerned in the industry to which the award or industrial agreement relates is to be read as a reference to an industrial union or industrial association that is a party to the enterprise agreement.

SCHEDULE 3 - AMENDMENTS TO OTHER ACTS - *continued*

Long Service Leave (Metalliferous Mining Industry) Act 1963 No. 48

(1) Section 3 (**Definitions**):

Section 3 (1):

After the definition of "Employer", insert:

"Enterprise agreement" means an enterprise agreement registered under the Industrial Arbitration Act 1940.

(2) Section 4 (**Long service leave**):

(a) Section 4 (2) (b) (i):

After "Acts" where secondly occurring, insert "or by an enterprise agreement".

(b) Section 4 (2) (b) (iii):

After "award", insert ", enterprise agreement".

(c) Section 4 (13) (a):

At the end of the definition of "Award", insert:

; and

(c) an enterprise agreement.

(3) Section 5 (**Exemptions**):

Section 5 (1) (a):

After "this Act", insert "or by an enterprise agreement,".

(4) Section 12 (**Recovery of long service leave pay**):

After section 12 (2), insert:

(3) Subsection (2) applies in relation to work for which the price or rate has been fixed by an enterprise agreement in the same way as it applies in relation to other work, except that the reference in subsection (2) to an industrial union concerned in the industry to which the award or industrial agreement relates is to be read as a reference to an industrial union or industrial association that is a party to the enterprise agreement.

Industrial Arbitration (Enterprise Bargaining) Amendment 1989

SCHEDULE 3 - AMENDMENTS TO OTHER ACTS - *continued*

Employment Protection Act 1982 No. 122

Section 4 (Definitions):

After section 4 (2), insert:

(3) This Act does not apply to employment the subject of an enterprise agreement registered under the Industrial Arbitration Act 1940.

Essential Services Act 1988 No. 41

Section 5 (Relationship to other Acts etc.):

Section 5 (c):

After "award", insert ", enterprise agreement".
